

CHAPTER VI

INFORMATION SERVICES

The purpose of this Chapter is to describe briefly the information and technical services available to Division attorneys, economists, and paralegals in conducting investigations and litigation, and to provide a resource guide to antitrust investigations and cases. This Chapter provides a useful checklist for Division personnel in researching specific issues and obtaining data services, litigation and technical support, and training in various investigation and litigation skills.

A. Information and Technical Services Available in the Antitrust Division

This section describes the various research and technical services available to the Antitrust Division. These include the resources of each section, task force, and field office, the FOIA Unit, the JEMIS system, the Antitrust Libraries, the Economic Analysis Group, the Corporate Finance Unit, the Information Systems Support Group, and the Division's training program.

1. Section, Task Force, and Field Office Resources

Each section, task force, and field office of the Division maintains substantial resources to assist attorneys, economists, and paralegals in obtaining information quickly and efficiently. Each section, task force, and field office receives the major legal materials that report new developments in the antitrust area (e.g., BNA and CCH reports), United States Law Week (Supreme Court and General Law Sections), and various industry and trade journals that relate to the component's assigned commodity and service expertise.

The combined expertise of the attorneys and economists of the Division is, in many ways, the most valuable information resource available within the Division.

2. Office of the Deputy Assistant Attorney General for Criminal Enforcement

The office of the Deputy Assistant Attorney General for criminal enforcement ("DAAG's office") maintains information about cases and investigations in numerous databases. Studies of cases filed (both criminal and civil) are available upon request, including specific defendant information, pleas, sentences, trials, restitution, forfeitures, penalties, and damages. Fiscal year statistical summaries are maintained. Information concerning opened or closed grand jury investigations as well as formal and informal immunity authorizations are also available, subject to the requirements of Rule 6(e). Frequently requested are searches of databases to determine whether the Division has ever investigated or filed cases against particular companies or individuals or in certain industries. The JEMIS system ("Judgment Enforcement Management Information System"), see supra Chapter III, Section H.4, is also maintained by the DAAG's office and contains various data about all consent decrees filed by the Division, including decrees pending approval by the court, in effect, modified, and terminated.

3. Freedom of Information Act Unit

The FOIA Unit provides two major services for the Division. First, it coordinates the Division's compliance with the Freedom of Information and Privacy Acts. See infra Chapter VII, Section G. Second, the Antitrust Documents group within the Unit serves as the official custodian of antitrust documents and other matters of interest. The group offers investigative and trial staffs access to much of the Division's prior litigation and policy materials including:

- (1) pleading files (government and defense) of many Division cases, including trial and appellate briefs and complete dockets, particularly of older matters not included on the Intranet or Internet;
- (2) all court orders, opinions, and final judgments in Division cases;
- (3) all Division filings with regulatory agencies;
- (4) all CIDs issued by the Division and the pleading files for all litigated CIDs;
- (5) all business review letters since 1968 and the complete public files of materials submitted in connection with the business review for the current year;
- (6) all publications of the Antitrust Division; and
- (7) all speeches and testimony given by Division personnel.

All Division staffs are required to furnish the FOIA Unit with copies of all court orders, opinions, and final judgments. Such materials should be sent promptly to the group by the section, task force, or field office responsible for the matter. All of the data and materials maintained by the Antitrust Documents group are available to Division personnel. In most instances, a telephone call, fax, or e-mail is sufficient to request assistance.

4. Library System & Services

Library services are available to Antitrust Division personnel through the Justice Management Division ("JMD") Library System and through Antitrust Division collections within the Division. The principal antitrust library is in the Bicentennial Building in Washington. There is also a small antitrust library in the City Center Building. They are branches of the JMD Library System, which is made up of the Main Library in the Main Justice building and 15 branch libraries in various locations throughout the Litigating Divisions. The Antitrust Division supports collections of core materials in the Patrick Henry Building and the seven antitrust field offices.

The antitrust libraries contain general and specialized reporters, treatises and legal periodicals; trade, business and census publications necessary to monitor industry activity; and academic economics journals and treatises. Library assistance is provided to Division personnel in

the form of reference and research, online database and CD-ROM searching, interlibrary loan and document retrieval, collection development and circulation. Requests for assistance may be made via e-mail (Public Group "Library"), telephone, or fax, as well as in person.

Typical resources used by the antitrust library staff to answer questions include CD-ROMs such as American Business Disc, Dun's Business Locator, Phonedisc, National Trade Databank and online database systems such as Dialog, Lexis/Nexis, Westlaw, Dun's Business Information Reports, Legislate, Pacer, CDB Infotek and Information America. These sources contain company and industry data, economic literature, background on individuals and expert witnesses, court records, and legislative materials.

Most antitrust library materials circulate, including trade and business journals. If a source of information is not held in the JMD Library System, patrons will be either referred to nearby libraries where the material is available or the items will be borrowed through interlibrary loan. Book and journal selection is done primarily by library staff, but Division personnel are encouraged to recommend items for addition to the library collection. The collection in the Main Library is available to Division personnel as are the other JMD branch library collections. An online library catalog, available at all antitrust library sites, makes available the complete holdings of all JMD libraries. (By the end of 1998, the catalog is scheduled to be available on the Department's Internet site as well as on the Division's Intranet.)

5. Premerger Notification Unit/FTC Liaison Office

The Premerger Notification Unit/FTC Liaison Office maintains information about cases and investigations in numerous databases. Statistics--including fiscal year summaries--regarding cases filed, litigated, won or lost, and penalties imposed are maintained. Information concerning opened or closed investigations is also available. Frequently requested are searches of databases to determine whether the Division ever investigated or filed a case against a particular corporation or individual, or in a certain industry. The Unit also maintains information on all filings under the NCRPA and HSR statutes. Information on clearances, the resolution thereof, and timing statistics involving the clearance program are also available.

6. Economic Analysis Group

The Economic Analysis Group ("EAG") provides economic analysis in all matters involving economic issues of substance. Economists identify the economic issues involved in an investigation or case, assist in the development of the theory of the case, identify and present data necessary to support the Division's position, assist in the development of trial strategy relating to the economic issues, and testify in Division litigation. More specifically, economists evaluate the competitive effects of business activities proposed for investigation; analyze proposed mergers and acquisitions by determining product and geographic markets, identifying potential entrants, and estimating competitive effects; analyze evidence related to alleged price fixing and bid rigging; participate in the formulation of relief necessary to restore competition; and analyze the economic effect of proposed consent decree modifications.

In addition, however, other services are available through EAG.

a. Statistical Services

EAG economists are trained in statistics and econometrics and regularly employ these tools. EAG also employs a professional statistician who works with EAG economists and is available to testify on behalf of the government at trials and regulatory proceedings or to critique statistical defense exhibits. The statistician's services may be arranged through the economist assigned to the matter or by request to the Chief or Assistant Chief of the Economic Litigation Section.

b. Corporate Finance Unit

The Corporate Finance Unit ("CFU") consists of five financial analysts and support staff and has as its primary purpose counseling and advising the Division on financial and corporate matters arising in antitrust enforcement. CFU may be of assistance in the following areas:

- investigating merger candidates' "failing company" claims;
- participating in divestiture negotiations and assessment of the viability of divestiture proposals, locating trustees, and evaluating potential purchasers;
- analyzing the efficiencies defense of a merger candidate;
- evaluating financial issues relating to damages; and
- determining the ability of a company to pay a fine or damage settlement.

CFU is available to assist trial staffs in preparing Division financial witnesses, to assist at depositions, to prepare Division attorneys to cross-examine financial witnesses, and to locate financial experts, such as investment bankers. In addition, CFU can be of assistance in analyzing and understanding organizational structures and the financing of merger transactions. CFU is also available to prepare affidavits and present testimony on financial and accounting matters.

(i) Resources Available to Division Personnel

CFU has access to various financial data bases with information on financial and corporate subjects. For example, CFU subscribes to the Bloomberg Financial Markets database, which contains financial profiles (including financial statements, SEC reports, news articles) on publicly traded U.S. and some foreign companies. CFU also uses the Internet to access information related to financial and corporate issues. CFU maintains a small library of reference materials often used to research specific topics. CFU can assist staff in obtaining publicly available information on specific companies and industries.

(ii) Procedures for Obtaining Assistance

CFU should be called upon to lend assistance in court proceedings where financial and management witnesses are expected to be examined. Even if only a short period of time is available for preparation, the assistance CFU can provide quite effective assistance. Where written reports subject to court-imposed deadlines are needed, a financial analyst should be notified as soon as practicable. Requests for the assistance of CFU must be approved by the Chief of the section, task force, or field office desiring assistance. Requests should contain the following information: (a) a clear statement of the matter and the assistance sought; (b) the estimated time required and the deadline; and (c) the significance of the deadline (court-imposed, etc.). In addition, the assigned financial analyst should be placed on the distribution list for the matter in question. Requests can be made to the Chief or Assistant Chief of the Economic Litigation Section. The CFU staff is also available to discuss matters with Division personnel informally and can assist staff in understanding complex issues such as the structure of a transaction, transaction financing (understanding where motivations and incentives lie), and the likelihood that a monopoly premium is included in the acquisition price.

c. Expert Witnesses

The selection of prospective expert witnesses in Division investigations involves collaboration between the legal component, EAG, and often the appropriate Director of Enforcement and Deputies. At a point in the investigation when litigation seems a significant possibility, the lead attorney, the legal component's Chief and/or Assistant Chief, and the EAG manager should confer about the investigation's expert needs. For economic analysis expertise, EAG typically provides an initial list of candidates. The discussion usually focuses on whether, for this particular matter, an EAG economist has special expertise and experience, or whether an outside academic or consultant offers qualifications more suited to the case. After a consensus is reached, the EAG manager contacts the candidate, discusses that candidate's interest and availability, and, if the candidate is a non-EAG economist, negotiates the scope of work and fees of the contract. The manager prepares a package including a completed OBD-47 Form and supporting memo that is processed by the Executive Office. All such packages for economist experts must be approved by the appropriate Director and by the Deputy Assistant Attorney General for economic analysis, who signs the OBD-47 Form. See Division Directive ATR 2110.1, "Employment of Expert Witnesses."

Special attention is paid to discovery concerns associated with the testifying economist. The "inside" EAG economist has full access to all materials and discussions, writes comprehensive economic memoranda, and participates fully in all case strategy and enforcement decision meetings. What the prospective testifying economist (the "outside" economist), whether from EAG or outside the Division is provided will depend upon the needs of the case and must be monitored so that an appropriate record is maintained for use later in discovery. The testifying expert's participation in strategy and enforcement decision meetings is severely curtailed.

The Economic Analysis Group maintains a file of affidavits, testimony and exhibits

presented by economists and other experts in antitrust cases, regulatory proceedings, and related matters. The contents are listed by type of case, e.g., Section 1 or 7, name of expert, case and date and type of material. To ensure the completeness of the file, Division attorneys are requested to provide any EAG manager with copies they obtain of testimony, affidavits, and exhibits presented by experts in antitrust trials and regulatory proceedings. Such material should not be limited to the government's testimonial evidence, but should include defense testimony and testimony introduced in private antitrust litigation and regulatory proceedings. Information about the file or access to it can be obtained by calling the Economic Regulatory Section.

d. EAG's Policy Analysis and Research Program

Economists in the Economic Analysis Group conduct economic research directly related to the Division's antitrust enforcement and competition advocacy programs and in connection with the Division's policy analysis of competitive issues. The major results of this research are available through EAG's discussion paper series. A list of discussion papers and copies of specific individual papers can be obtained by calling the Economic Regulatory Section.

7. Information Systems Support Group

a. Purpose

The Information Systems Support Group ("ISSG") is part of the Executive Office and is responsible for providing professional services and resources to support the Division's attorneys, economists, and managers in the gathering of information related to case support, economic analysis, and administration. In providing automated and technical support to the professional staff, ISSG makes extensive use of computer and database management systems. ISSG applies automated data processing techniques in three major areas: automated litigation support and economic analysis, management information systems, and office automation systems.

b. Automated Litigation Support and Economic Analysis

ISSG personnel are available to provide advice and assistance regarding document control techniques for numbering, sorting, and analyzing documents and other materials for attorneys or economists. ISSG can also assist in the identification of corporate computer records and in providing for their inspection, selection and use during investigations and litigation. Both the number of investigations and cases receiving automated support and the scope of this support has expanded rapidly. ISSG uses a wide variety of PC software products utilizing advanced technology and equipment. Databases designed by ISSG professional staff allow Division litigators to create simple or complex document control systems on the Division's computer system. Litigation Support staff provide beginner and advanced training for use of the systems. A customized database can be established by ISSG staff and then maintained under the control of attorneys and paralegals assigned to the matter. ISSG can also provide supplemental document coding services through its contracts with outside litigation support services.

Automated support techniques prove especially valuable in price-fixing and bid-rigging investigations, where machine readable data is available as a replacement for, or as a supplement to traditional hard-copy discovery materials. By entering specific data into the computer on product prices, volume of sales, or shipment schedules and locations, staffs can apply statistical analysis techniques. Similarly, they can provide invaluable assistance in merger investigations where large quantities of data often must be assimilated in short time frames. Large volumes of data for civil non-merger investigations can be rapidly reduced for evaluation by Division attorneys and economists.

On request, ISSG also generates computerized graphics based on the relevant data. These graphs enable the court and jury to grasp quickly the impact of complex price-fixing schemes or the results of bid-rigging conspiracies. ISSG is also available to assist the attorney staff in obtaining and processing machine readable materials from businesses and from federal and state bidding authorities to provide cost-effective analysis of bidding, pricing and market shares. Attorneys and economists may also contact ISSG for assistance in analyzing economic data through use of automated data processing techniques, and ISSG can assist staffs in obtaining access to text retrieval software for searching the full text of trial or grand jury transcripts and depositions.

Contact with ISSG should occur at the earliest stages in the investigation. After being contacted by the staff, ISSG reviews all the relevant information regarding the investigation and suggests a plan of support. ISSG will work directly with the attorney or economist to outline what needs to be done by ISSG and/or a private contractor, and to estimate the costs and resources necessary. The section, task force, or field office Chief may authorize smaller support projects. Larger projects require prior approval from the appropriate Director of Enforcement or Deputy Assistant Attorney General before work can begin. For additional information, see Division Directive ATR 2850.1, "Requests For Litigation Support."

c. Management Information Systems

The Antitrust Division's maintains several automated retrieval systems, designed to facilitate effective management of the Division's workload and resources, that comprise the Division's Management Information Systems ("MIS"). In addition to supporting internal management objectives, such systems support the Division's budget requests and assist preparation of responses to congressional and public inquiries about Division enforcement activities.

Two of the principal functions of the Division's management systems are (1) tracking Division investigative and litigation workload, and (2) tracking the allocation of Division resources. Among the types of matters tracked in the Division's MIS databases are: pre-PI HSR merger reviews, FTC clearance requests, preliminary inquiries ("PIs"), civil investigations, grand juries, criminal and civil cases, appellate cases, judgment modifications and terminations, business reviews, regulatory agency proceedings, amicus filings, economic studies, legislative liaison activity, special projects, citizen complaints, and National Cooperative Research and Production

Act ("NCRPA") filings. In addition to providing information on the Division's current workload, the Division's MIS databases contain information on both investigations and cases back to the late 1970s, and most filed cases back to the mid-1930s.

Section, task force and field office staff play a vital role in ensuring that the information in these databases is accurate and up-to-date. When authority is requested to open a PI or to file a complaint, the staff is required to supply basic descriptive information concerning the proposed matter for the Antitrust Management Information System ("AMIS"). The information required includes: matter title, judge, court, staff assigned, parties being investigated, industry, violations alleged, geographic area, etc. When approval to open the investigation is granted or the complaint is filed, then the Premerger Notification Unit/FTC Liaison Office assigns the new matter a DOJ file number and enters this basic information into the AMIS database. Subsequently, should any of the basic information about the matter change or when the matter progresses to the next stage (such as moving from a PI into a grand jury) the staff is required to provide the Premerger Notification Unit/FTC Liaison Office with updated information for the AMIS database.

The second area in which section, task force, and field office staff provide crucial data for the Division's management information systems is in the area of time accounting. The AMIS system permits staff to report the number of regular and overtime hours they work on a daily or weekly basis on Division matters. The accuracy and timeliness of these data play a vital role in the Division's ability credibly to present and defend its annual budget submissions to the OMB and Congress. This information is used by the managers of the Division's enforcement programs in assessing the level of effort devoted to particular matters. The Congress and oversight agencies also find the information valuable in evaluating the efficiency and effectiveness of the Division's enforcement efforts.

In addition to the matter tracking and time accounting systems, which facilitate management of the Division's substantive workload, the Division also employs database technology for purely administrative purposes. The Division's Human Resources and Full Time Equivalency Tracking Systems facilitate the administration of the Division's overall staffing levels, personnel expenditures, staff allocations, staff promotion schedules, etc. ISSG also provides Attorney and Paralegal Recruitment Tracking Systems which permit administrators to track the status of job applicants from initial contact through rating, evaluation and hiring. Finally, systems have been established for tracking and coordinating Division correspondence with the Congress, White House, industry and the public.

d. Office Automation Program

ISSG provides automated office systems to all Division employees. Integrated spreadsheet and statistical packages, business graphics, database management, and personal productivity software are available on the Division's central word processing system. The graphics software is easy to use and is capable of producing quality business graphics for use in trials. The integrated spreadsheet package permits the user to pass data from a spreadsheet

directly into a bar or pie chart. High resolution color graphics terminals, color plotters, and laser printers are available to print charts or displays of information. ISSG also provides periodic training for users on basic and advanced system capabilities.

8. Division Training Programs

The Antitrust Division offers an extensive program of training opportunities to Division attorneys, economists, paralegals and other personnel each year. The training program, part of the Office of Operations, has overall responsibility for Division training courses. The training program issues calendars and memoranda to notify employees of the opportunities available, provide a brief description of the programs to be conducted, and list the dates of such programs. Antitrust Division employees interested in attending a course should contact their Chiefs, in advance of the training course deadlines, to request permission to attend.

The Department's Office of Legal Education ("OLE") publishes a training calendar three times per year with information on training courses dealing with executive, professional development, management, supervisory, inter-agency, and other job-related training. Most of these programs are conducted in the OLE training center and are open to Division attorneys and support staff. In addition, the Division supports participation in and pays for training by private vendors as long as the program contributes directly to the performance of the employee's official duties. The Division regularly sends attorneys to courses sponsored by the National Institute for Trial Advocacy ("NITA"), the American Bar Association, the Federal Bar Association, law and business organizations, continuing legal education ("CLE") groups, and law schools.

a. Programs

The training programs offered by the Antitrust Division fall into four broad categories:

(i) Conferences, Seminars and Lectures

Since the fall of 1993, the Division has offered a substantial in-house training program that offers courses in litigation skills, antitrust law, economics, and other areas. These courses range in length from lunch-hour sessions to multi-day seminars. The Division also provides training in the use of litigation support tools through seminars sponsored by ISSG in the Washington components as well as the field offices. Training sessions on Westlaw are available through the Division's contract with Westlaw. To schedule a training session at Westlaw offices in Washington, DC, contact them at (202) 842-7577.

(ii) National Institute For Trial Advocacy ("NITA")

The Division has been an active participant in NITA programs since NITA's inception in the early 1970s. Each year the Division nominates attorneys to participate in NITA's regional and national session courses. Field office attorneys are often sent to regional NITA courses offered at law schools near the field offices. The NITA programs are rigorous, useful, and rewarding.

Experienced trial attorneys and judges serve as faculty, and the courses are built around student participation in a series of mock trials. Division attorneys who have attended in the past have been unanimous in praising these programs. Preference is given to attorneys who have several years of experience in the Division, are actively engaged in litigation work, and expect to remain in the Division for the indefinite future.

(iii) Special Assistants in United States Attorney's Offices

For many years, Division attorneys stationed in Washington have served tours of about six months as Special Assistant United States Attorneys, handling cases for the U.S. Attorney for the Northern District of Virginia in Alexandria, Virginia, and for the D.C. U.S. Attorney in the Superior Court for the District of Columbia. Similar programs are available for attorneys assigned to the field offices. These details provide the opportunity to gain trial experience. Despite the fact that the prosecutions do not involve Sherman Act conspiracies, the skills learned from these tours have a direct applicability to the Division's work.

Participation as a Special Assistant U.S. Attorney in either Alexandria or D.C. involves a full range of criminal practice. A Special Assistant in the Criminal Division in the Alexandria U.S. Attorney's office is involved in misdemeanor prosecutions in Magistrate Court, grand jury work, motions, pleas, probation revocations, and trial in District Court, as well as appellate briefs and arguments in the 4th Circuit. Special Assistants in D.C. prosecute misdemeanor offenses, participating in all phases of the process, from interviewing arresting officers to conducting bench and jury trials. If interested in applying for a Special Assistant tour of duty, attorneys should speak to their Chief. Since the Special Assistant tours are intended to augment the trial experience of Division attorneys, anyone accepting a Special Assistant position is expected to return to the Division for at least eighteen months after completing the detail.

(iv) Attorney General's Advocacy Institute ("AGAI")

Division attorneys are eligible to participate in the AGAI programs in civil and criminal litigation and appellate advocacy. The criminal course begins with a two-week program, with a third week of advanced and grand jury instruction scheduled later in the year. The civil course is a two-week program with no further requirements. Advanced courses are available. The AGAI also occasionally offers courses such as dispute resolution, ethics, legal writing, and computer crimes. These courses, also open to Division attorneys, usually last two or three days. Currently, AGAI's main purpose is to train Assistant United States Attorneys ("AUSAs"). OLE does, however, reserve about 10% of its spaces at the AGAI courses for attorneys from the litigating Divisions at the Department of Justice. Antitrust Division attorneys, along with attorneys from all other Divisions at the Department, may attend AGAI courses when space is available.

The Civil and Criminal Trial Advocacy Courses were established to provide basic training in the skills of trial advocacy. The course formats include complimentary lectures, workshops, and mock trials. The lectures center on the practical aspects of trial preparation and technique. The workshops and mock trials are designed to increase skills and cover basic trial problems. In

all AGAI courses, emphasis is on the skills of advocacy and trial practice rather than substantive law. The courses are designed for attorneys with little or no trial experience. They are intensive programs featuring lectures by experienced litigators and simulated trials before federal judges.

b. Videotape Library

The Department and the Division have established a videotape library containing various training materials. These materials are available for use by Division attorneys and may be obtained through the Training Program at (202) 307-1338 or (202) 307-0923.

The Legal Education Institute, part of the Department's Office of Legal Education, sponsors many free videotaped lecture series each year. The taped lectures include Irving Younger's Trial Advocacy and Discovery Techniques series, and Effective Negotiation and Settlement by Gerald Williams. These videotaped seminars are offered periodically in Washington, D.C., and other cities with substantial numbers of federal attorneys, such as Atlanta, Philadelphia, and San Francisco.

c. Application Procedures

Training opportunities and materials available for Division personnel and selected programs of interest are announced periodically in memoranda from the training program and the Executive Office. Training requests should be approved in advance by the applicant's Chief. See Division Directive ATR 1410.1, "Employee Training".

B. Informational Aspects of Conducting An Antitrust Investigation

Over the years, Antitrust Division attorneys and economists have accumulated considerable experience in investigating, analyzing and litigating antitrust matters. In their work, Division attorneys and economists have found some sources and practices particularly useful in obtaining, assembling, and retrieving information.

At the outset, investigations typically require a quick accumulation of data about the companies, the industry, and the alleged violation that are the subject of the probe. Section 1 below describes some resource materials that are publicly available or found within the Division. Section 2 below discusses information services and technical support available during the course of an investigation. Finally, after a case is approved, if it is not settled the staff will be in need of services tailored to assembling or retrieving the information necessary to the proper presentation of evidence in court. Section 3 below describes services available to Division staffs at this stage.

1. Preliminary Information Sources

When an attorney, economist or paralegal initially receives a complaint that a course of conduct or proposed transaction may violate the antitrust laws, he or she has immediately available a number of information sources within the Division. These sources include (1) material

developed during the course of previous Division investigations and litigation, and (2) trade and industry data available through the library, the Economic Analysis Group, and ISSG.

a. Prior Division Investigation and Litigation

The Division's official records of past investigations and litigation are a major source of industry and company information. Reports on recent Division activity in particular industries may be obtained from the Division's workload tracking system (AMIS) by calling ISSG or the Premerger Notification Unit/FTC Liaison Office. Files on matters may be obtained from the responsible section, task force, or field office. Files on closed matters may be obtained from the GSA records center by contacting the Files Subunit in the Executive Office.

(i) Investigative Files

The AMIS database, maintained by ISSG, contains indexes by commodity, company and Standard Industrial Classification ("SIC") code for all investigations and cases conducted from 1963 to the present. AMIS also contains information on various screening investigations. Once relevant files are identified, the records themselves can be obtained by contacting the Files Subunit in the Executive Office. Access to information within AMIS may be obtained by calling ISSG or the Premerger Notification Unit/FTC Liaison Office. Other information about investigations and cases may be obtained from the appropriate Special Assistant.

(ii) Pleading Files

The Antitrust Documents group of the FOIA Unit maintains a card index of Division litigation, by commodity, defendant, type of violation, and case name. In addition, the group maintains regulatory filings by agency and date, as well as a collection of all complaints, indictments, informations and final judgments. Finally, the group has copies of all speeches, testimony by Division officials, Division publications and business reviews. Both the Internet and the Intranet contain copies of pleadings filed in numerous cases.

b. Public Information Sources

In addition to the Division's internal files, considerable public information is readily available that can be quite helpful during the initial stages of an investigation. Particularly in merger investigations, it is useful to refer to the Standard Industrial Classification ("SIC") codes when gathering market and market share data. The SIC system classifies business establishments by type of activity. It is hierarchical -- divided in 2-digit Major Groups, 3-digit Industry Groups, 4-digit Industries Group, and 7-digit codes for specific commodities and services. The SIC codes are assigned by the Office of Management and Budget and are employed in Department of Commerce publications and various commercial publications and databases.

The Standard Industrial Classification Manual, first published in 1945, lists the 4-digit SIC codes and cross indexes them by commodity. It is periodically revised, most recently in 1987.

Towards the end of 1997, a new set of codes is scheduled replace the SIC codes. The North American Industrial Classification System ("NAICS") will harmonize the industrial classifications previously used in the United States, Canada and Mexico into one common code system. The new system will also expand and emphasize the descriptions of service industries. The SIC Manual is available in the Division libraries and in each section, task force, and field office. (The same listing appears in the SIC Code Book maintained by the designated AMIS coordinator in each section, task force, and field office.)

Useful investigative sources of publicly available information include:

(i) Market Share Information

Preliminary market share information should be determined at the beginning of any merger investigation and many civil non-merger investigations. Market share information is available from various public sources:

(1) U.S. Department of Commerce, Bureau of the Census report -- the Economic Censuses include the Censuses of Manufactures, Mineral Industries, Retail Trade, Wholesale Trade, Service Industries, Finance, Insurance and Real Estate, Construction, and Transportation. They are conducted every five years -- in years ending in two and seven. Between those years, they are updated by various surveys.

Both Manufactures and Mineral Industries are subdivided into 5- and 7-digit product codes. The Censuses provide the number of establishments or companies in an SIC code and the value of shipments or sales, for either the United States as a whole or a smaller geographic area. The Census of Manufactures reports concentration ratios by 4-digit SIC. The Censuses are available in both print and CD-ROM format. Other government sources of information include The National Trade Bank on CD-ROM and the Federal Trade Commission's Quarterly Financial Report for Manufacturing, Mining and Trade Corporations. The Department of Commerce's U.S. Industrial Outlook will resume publication in 1997. It provides broad survey articles on various industrial sectors. The articles are signed and the authors may be contacted for further specialized information. These reports are available in the Division libraries.

(2) Directories, CD-ROM, Online Databases -- other sources of market share information by SIC include directories, CD-ROMs and online databases. Manufacturing USA, Service Industries USA, Finance, Insurance and Real Estate USA, Ward's Business Directory and Market Share Reporter (MSR is searchable on Nexis) provide information by 4-digit SIC and rank companies in terms of sales. For initial information on a firm's market presence in certain specific industries, the Division has on-line access to various computerized databases. For example, for data on airlines, the Division can currently access the Back Information Services Aviation Listing; for data on hospitals, the Division has the American Hospital Association Guide to Hospitals; and for information in bank loans, the Division has on-line access to the FDIC data base. Listings by up to 6-digit SIC, limited by state, city, county or zip code, are available on the Phonedisc and American Business Disc CD-ROMs. Online sources of market share information include the

Dialog and Lexis/Nexis databases. Approximately 130 files on Dialog are searchable by SIC or product code. Some files index their contents by 7- or 8-digit SIC. Full-text market research reports are available on approximately six files. The Company and Market libraries on Lexis/Nexis are also good sources of market share information.

Staff should consult with the antitrust library and with EAG to determine which databases are currently available and in use. Dialog and Lexis/Nexis searches may be made in the main antitrust library. Selected personnel in the sections and field offices have access to online databases through Westlaw.

(ii) Trade Association Information

Several directories of associations identify associations serving particular industries or commodity areas: National Trade and Professional Associations, Encyclopedia of Associations, and Associations Yellow Book. Once an investigation is approved, the associations themselves may be contacted and they will often provide information that can help to determine the scope of the market, the companies in that market, and market share data. The main antitrust library maintains these directories.

(iii) Trade Press

There are a large number of trade periodicals, industry yearbooks, almanacs, and directories that contain information useful at the early stages of an inquiry. The Division's library staff can identify industry specific directories, yearbooks and almanacs, and provide bibliographic assistance by searching for articles on companies and industries. Bibliographic sources include the online databases Dialog, Dow/Jones News Retrieval on Westlaw, Lexis/Nexis, and the CD-ROM Computer Select. Once relevant articles are identified, they may be available in the antitrust library or borrowed through interlibrary loan. Requests for such assistance should be made to the library staff.

(iv) Corporate Information.

(1) General Information -- Several print publications offer general data about public corporations, including officers, subsidiaries, sales, and general corporate history. These sources include the Billion Dollar Directory, Million Dollar Directory, Standard & Poor's Register, Directory of Corporate Affiliations, Principle International Businesses, and Moody's Manuals. Moody's Manuals provide concise descriptions of domestic and foreign companies, including information on company history, products, plants, stock prices and recent acquisitions. CD-ROMs with corporate information include Dun's Business Locator, Dun's Million Dollar Directory, Corporate Affiliations, and American Business Disc. These directories and CD-ROMs are available in the antitrust library.

(2) Specialized Information -- Dun and Bradstreet produces specialized Business Information Reports on both domestic and foreign corporations that provide up-to-date economic

and business information on public and privately-held companies. The Internet is also an option in some instances. Many companies even have a home page that may have information on the firm's own perception of itself and the industries in which it does business. Dun and Bradstreet Reports may be requested from the Antitrust library staff. All Division personnel have access to the Internet.

(3) Securities & Exchange Commission (SEC) Filings -- SEC filings for public companies, including 10-K (annual report to the SEC) and Annual Reports to stockholders, provide useful corporate information, especially relating to a company's perception of its markets, market shares and industry position. They may provide useful comparisons with subsequently obtained documents and materials. These filings are available, either in partial or full format, from Dialog, Lexis, Westlaw or through the Internet. On request the antitrust library will supply instructions for downloading the information. Upon request, librarians will also search the EDGAR database (a database on the SEC Internet site containing all the filings the SEC has received electronically from 1995 onward including annual reports, 10Ks, 13Gs, etc.) and print out specific reports. Filings can also be obtained from Disclosure, Inc., usually on a same-day basis. To request filings through Disclosure or Dialog, contact the antitrust library. The library also has a microfiche collection of the 10Ks and Annual Reports of all Fortune 1000 companies for the years 1976-1995.

(v) Legal Information

Information on company litigation can be obtained from the full text legal databases, Westlaw and Lexis. The public records databases--Information America and CDB Infotek--contain court records that can be searched by company or individual name. Dun and Bradstreet Business Information Reports include information on liens and judgments. The indexes to BNA's Antitrust & Trade Regulation Report ("ATRR") and CCH's Trade Regulation Reporter ("TRR") can help an investigator determine whether a company or industry has been the subject of antitrust investigation or litigation by the Division, the Federal Trade Commission, states or private parties. Westlaw, ATRR and TRR are available in the Division libraries, the sections and field offices. Lexis is available in the antitrust library and to certain personnel in the sections and field offices. Information America and CDB Infotek searches are available through the library. Dun and Bradstreet Reports are available through the library and in the field offices.

2. Information Services and Technical Assistance Available During the Course of an Investigation

Before preliminary inquiry authority is requested, the attorney already should have reviewed much of the publicly available information and developed a legal theory upon which to proceed. Frequently, an economist should be consulted at this stage. Once authority is granted, the focus shifts to more specialized information on a transaction or practice. The staff will begin to develop information through voluntary requests. Once compulsory process is authorized, it may be used in connection with the subject companies, customers, trade associations and other industry sources. At this stage, the investigators must consider not only what information will be

sought, but how such information is to be stored, indexed and retrieved. In merger investigations, the staff must work within the time frame for the premerger notification rules in requesting additional information from the companies and in issuing CIDs. See supra Chapter III, Section D.

The staff should begin to assess the strategy to be used in both the investigative and litigation stages of the proceeding. It is never too early for the staff to begin to discuss the type of relief that would be feasible if a case were brought, since, as a practical matter, the reason the Division would bring a case would be to correct or prevent anticompetitive activity. In civil or criminal conduct investigations, the staff should also assess the possibility of a damage case on the government's behalf. Staff should determine if there were significant government purchases or if government funds were less efficiently utilized because of anticompetitive practices. In essence, planning the investigation will contemplate all of the litigation options available to the staff, as well as an orderly use of the resources available in conducting the investigation.

The Economic Analysis Group provides an analytical assessment of all the economic issues raised in each civil investigation -- e.g., product or geographic market definitions, entry issues, and competitive effects. Coordination between the legal and economic staffs at the early stages of the investigation allows the economist to assist in framing the questions to be asked in a subpoena, CID, Second Request letter, or voluntary request, as well as in interviews and depositions. EAG managers are copied on all opening memoranda and routinely assign economists to most matters at the time PI authority or grand jury authority is granted. EAG also receives copies of all Hart-Scott-Rodino filings (without attachments). Those are screened within EAG, and many are quickly assigned to economists. In merger investigations, where the staff usually has a limited time to obtain information and prepare its case, it is critical that the assigned attorney and economist make contact with each other quickly. If the legal staff does not already know the economist assigned to a matter, that information can be obtained by calling any EAG manager's office.

a. Obtaining Information from Corporate Entities

Whether the investigation is conducted under the premerger notification procedures, by CID, by grand jury or by voluntary requests, it is almost always necessary to obtain information from the corporate entities in the industry that are the subjects of the investigation, as well as those that may have useful information, or may be victims of the conduct (e.g., customers). Although these techniques differ in merger cases and behavioral cases, certain principles in obtaining information from corporate entities apply to either type of investigation.

(i) Noting Unique or Specialized Industry Practices

As the investigator researches the public sources set forth above, he or she should look for unique or unusual industry structural and behavioral characteristics that are discovered. Examples of the types of information that are helpful in Sherman Act investigations include: (a) manner in which the product is priced; (b) terms of sale (e.g., delivered pricing, pricing zones, etc.); (c) who in the corporate structure is responsible for pricing, attending trade association meetings, etc.; (d)

how sales are transacted (bidding, negotiation, price lists, etc.); and (e) economic factors that affect the industry. Similarly, in merger investigations, the staff should promptly gather information about: (a) the relevant markets, both product and geographic; (b) the market shares of the companies; (c) other products produced or considered for production by the companies; (d) the financial condition of the companies; (e) which products are the closest substitutes for one another; (f) the competitive effects of the transaction; and (g) industry or marketing studies that provide a basic understanding of the markets. This information will help the investigator to draft a more focused document request.

(ii) Consult the Economic Analysis Group for Economic Assistance

Before a subpoena, CID, Second Request letter, or voluntary request is drafted, the investigator should consult with the economist assigned to the matter. This coordination at the early stages of the drafting process allows the economists to assist in framing questions to obtain the most useful information in its best form, and to draft questions that consider relief options and damage possibilities. An economist familiar with the industry also may assist the attorney in sharpening questions about specific industry practices or activities. Cooperation between the attorneys and economists at this stage will result in better information and a more focused investigation.

(iii) Consult with the Corporate Finance Unit

When the document request calls for company financial documents relating to justifications for certain types of behavior, or where structural considerations are present, e.g., failing company defense or divestiture as a relief option, CFU should be consulted to determine what types of information are necessary, how they may be obtained, and how the request should be framed to obtain specific data. This may be especially important in a merger investigation at the Second Request or CID stage. See supra Section A.5.b (providing a more complete discussion of CFU and procedures for obtaining assistance).

(iv) Consult with ISSG

When the staff is beginning to frame questions for subpoenas, CIDs or Second Request letters, the staff of ISSG's Litigation Support Unit can assist in several ways. First, ISSG personnel can help to frame questions that will result in more efficient information retrieval. ISSG litigation support personnel can suggest methods of categorizing documents for screening, organization and retrieval. This arises both where there is need for automated data processing support or where some manual organizational techniques will be implemented. Consultation will help attorneys plan for problems of document organization and retrieval before actual submission of documents. Second, investigators should review with ISSG's Litigation Support staff all options regarding document or data production. Even if the investigative staff anticipates only a small volume of documents, ISSG personnel can advise the staff about the possibility of establishing a computer database for controlling and analyzing the information. ISSG's Litigation Support staff have simplified the process of creating document database systems and can easily

create single or multiple data base systems in a relatively short period of time. Third, ISSG personnel can help the staff determine what type of computer database the companies themselves have and how the Division can best frame document requests for access to such data. This type of question in the document request can be very specialized and technical; accordingly, the data processing expertise of ISSG should be utilized in framing documentary or interrogatory requests for computerized information.

(v) Consult the Grand Jury Manual and Previous Work Product

The Division and the FTC have agreed to a model Second Request schedule which is widely available. EAG has made available a data request exemplar. The Grand Jury Manual and the pleading files also can provide staff with samples of how the Division has requested similar information in the past. Much of this material is available in the Division's Work Product Data Bank. The Special Assistants to the Directors of Enforcement will also be knowledgeable about recent requests for information used by attorneys in other sections.

All CIDs issued by the Division, including the document or interrogatory schedules of each CID, are available from the FOIA Unit. The Special Assistants may also be aware of forms of questions, definitions, and other document request strategy, based upon its review of a wide variety of CID and Second Requests, including possibly previous requests of the particular subjects of the present investigation. In addition, the Division already may have information from the company from previous investigations.

(vi) Drafting the Documentary Requests

Consultation with the personnel and use of the resources indicated above should assist the staff in drafting documentary requests. Since the staff is educating itself about the behavior or transaction in question by reviewing documents, the goal of the document request should be to obtain those documents that will assist the staff in facilitating a case decision and preparing the case, if warranted, as quickly and efficiently as possible. This is achieved in part by making requests that result in the production of the documents the staff actually wants to obtain. All documents produced should be reviewed, so it is in the staff's interest not to obtain more documents than it needs to reach a case decision and prepare a case, if one is warranted. The form of the question, therefore, is important, e.g., subparagraphs that request a specific group of documents are more useful than an "all documents that relate or refer to pricing" type of request. Again, this is a matter that depends on the staff's prior knowledge of the industry and the activity, and specificity is not always possible or practicable. Where the request is necessarily drafted in broad language, staff should narrow the initial production as much as possible once they have learned what responsive documents the recipient possesses.

(vii) Organizing the Documentary Submissions

Before the staff receives documents from the recipients of the subpoenas, CIDs or Second Requests, it should determine how the documents should be organized for review, analysis,

storage, and retrieval. The document request should contain a number of specific subsections, and the instructions should ask the recipient to arrange the documents by designated company code, paragraph and subparagraph number, and consecutive numbering within each subparagraph. This assists the staff to organize the documents upon receipt and also helps the recipient to maintain a record of what it has submitted. Staffs are also encouraged to include in the document request a demand for any index that the recipient has created in the course of responding to the request; in the case of merger Second Requests, staffs should include an index specification like that contained in recent exemplars.

Upon receipt of the first documents, it is wise to consult with ISSG regarding an indexing system if this has not already been done. The documents should be organized and sorted by the attorneys, economists and paralegals to ensure that compliance is complete, copied so that a set may be maintained in their submitted form, and sorted and indexed using whatever indexing and retrieval system the staff has established. Documents should be securely maintained in the files of the staff or in a central repository. See Division Directive ATR 2710.4, "Safeguarding Sensitive Information." While many staffs arrange documents in filing cabinets, some staffs, depending on the circumstances, prefer to keep the documents in their original boxes.

Staff, in conjunction with ISSG's Litigation Support staff, may develop a simple retrieval system such as using index cards or a numbering system that references a company, individual or type of transaction. A wide variety of techniques may be used. It is most efficient, however, to employ a consistent means of indexing and sorting and to make certain that all staff members clearly understand the process.

b. Use of Documents and Materials in the Investigation

Once a staff has obtained documentary information, they should begin to assemble such information for the interrogation of witnesses. Systematic sorting and analysis of the documentary material will assist the staff in determining the strategy of the investigation. The staff should be able to use the database systems developed by ISSG for this purpose. Some staffs find it helpful to begin document review in a conference room together, so they discuss documents whose categorization seems uncertain and develop consistent sorting patterns.

(i) Using Documents to Locate Witnesses

Documents can help in locating potential witnesses. Witnesses can be identified by the submitted documents they authored, their position within the corporate structure, or their other responsibilities. To assist in this process, always ask in a civil investigation for the names and present business addresses and phone numbers of all relevant current and former employees of the corporation. Also ask for last known home or work information as well, if the employee has left the company. In a criminal investigation, always ask for the last known home address and phone number, and the social security number of relevant present and former employees. The FBI can be help locate former employees.

(ii) Using Documents to Prepare Immunity Requests for Witnesses

The staff should use information derived from documentary and interrogatory responses to prepare information necessary to process witness immunity requests. As is indicated in Chapter III, Section F.7., the Witness Records Unit of the Criminal Division requires a minimum of 10 full working days from the date of receipt to process an immunity request through the Department's records. If the information provided is not complete, it may take longer. The immunity request form, Form OBD-111, asks for substantial identifying information about the individual, such as home and business address, social security number, and date of birth.

Information obtained through document requests to the companies can facilitate the preparation of immunity requests, thereby saving the staff considerable time in later locating information; delays in processing immunity papers can force staff to cancel sessions with the witness.

Division attorneys have found it helpful to request witness immunity as far in advance of the witness interview or appearance as possible. This allows the staff to develop as much information as possible about the witness before the witness actually testifies. It also allows immunity clearance to be obtained prior to the attorneys' making any promises or commitments to the witness or counsel.

(iii) Using Documents in Preparing Interviews and Testimony

In both civil and criminal investigations, the staff should know as much as possible about the witness, the witness' company, and his or her activities with respect to the transaction or conduct in question before staff interviews the witness or takes testimony. In preparing for a witness interview or testimony, staff should review and evaluate all relevant documentary materials about the witness, including desk calendars, diaries, telephone records, expense accounts and corporate documents prepared by, sent to, or commented upon by the witness. ISSG's Litigation Support staff has developed standard data bases to facilitate this process.

Many attorneys have found it useful to outline in detail the activities of the potential witness. It is useful to maintain, either in manual form or with computer assistance, a file of documents and materials prepared, written, or read by the witness, as well as the witness' expense accounts, desk calendars, etc. It is also extremely valuable when using a litigation support system to search for all prior statements or testimony attributed to the witness to detect any contradictions in the witness' presentation. ISSG typically can provide systems to facilitate searching the full text of prior testimony. The antitrust library may also be able to assist in finding earlier public statements of the witness.

During the course of interviews or testimonial sessions, it is most important for the attorney to ask non-leading questions, obtain a full narrative from the witness, and follow-up. The attorney should not seek to impress the witness or counsel with the attorney's knowledge of the witness or of the industry; rather, for later litigation purposes, and for fairness to the witness

and others within the industry, the witness should provide a statement in his or her own words. Such statements are of enormous value in admitting them as past recollection recorded or for impeachment in later proceedings. Short answers to leading questions cannot be used as effectively.

When documents are used during the witness' interview or testimony, such documents should always be appropriately marked and verified by the witness as exhibits. In this way, the witness has explained a specific document on the record and may have authenticated it. Copies should be employed for this purpose, and be marked with an exhibit number and initialed by the witness during an interview or testimony.

(iv) Using Documents for EAG or Financial Analysis

Documents that contain information to be analyzed by the economists or financial analysts should be provided to those individuals upon receipt. In that way, they can contribute to the development of the case and assist in the preparation of witness questions and materials, as well as in interviews and depositions. Economists and financial analysts are considered antitrust "investigators" under the Civil Process Act. See 15 U.S.C. § 1311(d). It is at this time that economic analysis of price and marketing conditions can begin, as well as determination of possible federal damages in a price-fixing or bid-rigging investigation. Economists can use the documents in developing relief options and theories, and financial analysts can use them to perform financial analyses and viability studies. If, upon review, the economist believes that the economic data can best be analyzed by use of data processing techniques, the economist either handles this internally within EAG with research assistants or (often with the attorney) consults with ISSG.

The economists also will begin to chart the relevant information in graphic form. EAG and ISSG can produce the final product with in-house or contractor staff. ISSG will assist in obtaining the services of Department or other graphics assistance. Staff should provide at least several weeks for the graphics work to be completed. See Division Directive ATR 2510.1, "Printing, Graphics and Photographic Services."

c. Use of Legal Resources During the Investigation

The legal theory shapes the framework for conducting the investigation and seeking information. Staff should research legal issues that develop during the course of an investigation as soon as it is feasible. This is especially useful in situations where the theory of the case is complex and where the case law can guide investigative efforts and relief options.

The Division has accumulated extensive research work product over the years, and much recent work product is readily available in the Division's Work Product Document Bank. Older work is in hard copy files--if in a filed brief, available from the FOIA Unit or if not public, available in the Division's files. Requests for particularly complex research assistance may be made to the Chief of the Appellate Section. Such requests should be specific, relate to an

important issue of some complexity, and be made with substantial lead time to allow completion of the project. The appellate attorneys may also be aware of other situations where a similar problem has arisen. In addition, the appropriate Director or Special Assistant may be consulted about whether the issue has arisen before and the context in which it arose.

d. Use of Public Sources During the Investigation

As indicated in Section B.1.b, there is a wealth of industry source material in the Division libraries, or available from inter-library loan or other public sources. As the staff needs more specific information available from public sources, e.g., newspaper and trade press announcements of price changes or corporate policy, the staff should contact the Division's library staff for guidance in locating such material. Various computer databases may have the exact data required. The staff is encouraged to consult industry publications periodically during the course of the investigation to determine what practices or policies of the industry may have been altered as a result of the investigation, and what is being reported within the industry about the status of the investigation.

e. Preparation and Retrieval of Testimony, Interview Materials and Documents in Concluding the Investigation

As the staff is interviewing individuals, or taking testimony by either grand jury or CID deposition, when it plans to recommend that a case be brought, the staff should begin to assemble the information into a summary form that is readily retrievable for analyzing the evidence in a case recommendation or drafting an order of proof, preparing for discovery, and preparing for trial. Staff should always have CID testimony provided in a machine-readable format for use in our computer database. ISSG can provide the format specifications to provide to court reporters. When the staff begins using computerized indexing and retrieval of transcripts, paralegals should begin to digest and reference the transcripts and interviews as the transcripts are received and the interviews are taken. This system also allows the staff both to update its preparation for additional witnesses and to assess its investigatory findings at each stage of the investigation. While there is no one indexing and retrieval system that is always better than any other, the staff should use one consistent system tailored to the needs of the investigation and the personal preferences of the staff. (ISSG is available for consultation in this area.) Indexing and retrieval that begins early in the investigation and continues throughout the process makes it less likely that particular areas or lines of questions will be missed, and facilitates preparation of a case recommendation and evidence for trial.

3. Information Services and Technical Assistance Available at the Litigation Stage

Once the complaint or indictment is filed, the staff's primary goals shift from compiling information to developing a framework for organizing and presenting the information to the court and the jury. In many ways, the indexing and retrieval methods developed during the investigatory stage are now most useful. Specialized and technical assistance are most valuable at this stage.

a. Preparation of Expert Economic or Statistical Evidence

The economists and statisticians who have been working with the staff through the investigation--and have been preparing data for the staff--will continue to play an important role at trial. These experts may serve as witnesses (either during the case-in-chief or on rebuttal) or as consultants to the trial team. See supra Section A.5.c (discussing the selection of expert witnesses and the distinction between "inside" and "outside" economists).

(i) Preparation of Exhibits for Economic or Statistical Experts

If an economic or statistical expert is going to testify at trial and employ any type of charts, graphs, or other visual aids, such as pictures or slides, the economist or statistician, together with the staff, should prepare the appropriate materials. There are a variety of methods that might be used to generate such materials. These include preparation through internal graphics packages, use of private vendors, and reliance on other branches of the Department. Consultation with the staffs of other recent trials and with ISSG can usually identify the full set of possibilities.

(ii) Preparation of Sound Recordings and Other Technical Assistance

If the staff or the expert needs sound recordings or other technical support, such as handwriting or typewriting analysis or fingerprint identification, the staff or expert should request FBI assistance. Unless the staff has already been working with the FBI on the investigation, a request for FBI assistance should be made through the office of the Deputy Assistant Attorney General for criminal enforcement as discussed in Chapter III, Section C.2.a. In appropriate circumstances, FBI special agents may testify concerning their findings and analysis.

(iii) Receipt of Economic and Statistical Evidence to Be Employed by Defendants

Staff attorneys and economists should always attempt to obtain, as early as possible in the discovery process, the exhibits, back-up data, and other relevant information that the defense experts are likely to use. This assures the staff that there will be adequate time to study and analyze the material, especially where the defense is relying on computer-based data or statistical samples. EAG, through its economists, statisticians and research assistants, can assist the staffs in developing this information for use in cross-examination and for other purposes.

(iv) ISSG Support for Computer-Based Information

If the Division will employ computer-based economic or statistical information, the legal staff, the economists and statisticians and ISSG should develop the method of presentation at the earliest stage possible. Early consultation is necessary since the materials must be computerized before it can be usefully employed--and these functions often require time.

b. Preparation of Documentary Exhibits

Organization of documents to be used at trial can be very important to a successful outcome, and computerized databases can be used to maintain a log that greatly facilitates good organization. Documents should be identified with number and exhibit stickers, and the computerized log should indicate relevant information about the various documents (i.e., the number and description of each document to be admitted, the witness that can admit it, any problems of authenticating the document, etc.) As trial proceeds, the log should be continually annotated to indicate which documents have been admitted into evidence, the date of admission, the transcript reference to admission, if available and any rulings on objections to admissibility.

c. Sources of Information About Trial Witnesses

Staff should always formally request the FBI to check the prior criminal records of the defendants, all potential witnesses for the government and defense, and all co-conspirators. Staff should also request an AMIS report from ISSG and consult with the Premerger Notification Unit/FTC Liaison Office and the office of the Deputy Assistant Attorney General for criminal enforcement to check former Division cases involving the defendants. The index to the CCH Trade Regulation Reporter may provide the staff with information about other antitrust cases involving the defendants, including private actions and FTC cases.

d. Information Retrieval During and After Trial

The trial staff should index and summarize the trial proceedings for several reasons. First, the indexed material may need to be retrieved quickly for specific motion arguments during trial. Second, the material is necessary in responding to motions at the conclusion of the government's case. Third, the material is crucial for preparing for closing argument. Fourth, the material will form the basis of proposed findings of fact, post-trial briefs, and any appellate briefs.

The system employed throughout the investigation should be continued at trial. Further, it is advisable that one person coordinate this information during trial. The attorney who will make the closing arguments is usually the best person to supervise this process. Similarly, admitted documentary evidence that will be employed in motions and arguments should be properly categorized together with the testimonial information.